Supreme Court, U.S.
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No. 85-1

In the Supreme Court of the United States

October Term, 1985

THE STATE OF OHIO,
Petitioner,

v.

WILLIE EUGENE ADKINS,
Respondent.

PETITIONER'S REPLY TO BRIEF IN OPPOSITION

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I

THE COURT OF APPEALS FOR HIGHLAND COUNTY DID NOT BASE ITS DECISION ON AN ADEQUATE, INDEPENDENT, SUBSTANTIVE STATE GROUND SO AS TO PRECLUDE REVIEW BY THIS COURT.

The Fourth District Court of Appeals initially addressed in its opinion "The confrontation clause of the Sixth Amendment to the Constitution of the United States, which applies to the states...". The Appellate Court continued its analysis of Assignment of Error No. 3 by citing United States Supreme Court decisions. The availability of defendant Counts, as a witness, his failure to be called, and the relevance of that fact was discussed in light of federal constitutional cases. The court stated federal constitutional law required the presence of counsel at a jailhouse confrontation in order to comply with the Sixth Amendment.

Ultimately, the court held as follows:

> In light of the above, we conclude that not only were the hearsay statements by Counts introduced at trial wholly inadmissible

> under the Rules of Evidence, they were also inadmissible as a matter of constitutional law. Such admission constituted a denial of appellant's Sixth Amendment guarantee of confrontation.
>
> In as much as the error was of federal constitutional dimensions, it can be deemed harmless only if the reviewing court can declare it was harmless beyond a reasonable doubt...See appendix of petitioner at page A8 and A9.

One can only conclude that the single reference to Ohio Rule of Evidence 804(B) (appendix at page A7) was made in order to construe it in light of federal constitutional case law.

Therefore, review by this case is proper because: (1) Any reference to state law necessarily incorporated federal constitutional law. California v. Beheler US , 77 L. Ed. 2d 1275, 103 S. Ct. (1983). (2) The Court of Appeals cited for its authority United States Supreme Court decisions, Oregon v. Kennedy, 456 US 667, 72 L. Ed 2d 416, 102 S Ct 2083

(1982). (3) The court summarily discussed the state law issue almost as an aside and devoted its attention to the federal constitutional issues. Florida v. Meyers, US , 80 L. Ed. 2d 381, S Ct (1984) and (4) The court felt compelled to construe the Ohio Rule of Evidence on hearsay as being violated under federal constitutional case holdings. Michigan v. Long, US , 77 L. Ed. 2d 1201, (103) S Ct (1983).

II

PETITIONER DID PRESENT TO THE SUPREME COURT OF OHIO THE FEDERAL CONFRONTATION ISSUE AS WELL AS THE HARMLESS ERROR ISSUE

The State of Ohio, in its Memorandum in Support of Jurisdiction to the Supreme Court of Ohio, in Case No. 85-0012 set forth the following propositions of law:

PROPOSITION OF LAW NO. I:

A third person's extra-judicial statement made in the presence of the defendant is to be treated

by the trial court the same way as an extra-judicial statement made by a law enforcement officer in the presence of the defendant.

PROPOSITION OF LAW NO. 3:

Where the appellate court finds ample independent evidence to establish that the defendant is guilty as either the principal offender or an aider and abettor and that the wrongfully admitted evidence only involves who the principal offender is, then under the Chapman standard there is harmless error.

The Table of Contents of the Memorandum in Support of Jurisdiction to the Supreme Court of Ohio is set forth in the Supplemental Appendix contained in this reply at pages A1 through A4 .

CONCLUSION

This case was reversed because the Court of Appeals found a violation of the Sixth Amendment right to confrontation and specifically so held. The court found that the error was not harmless under United States Supreme Court decisions. The citation

to state law was an aside and should not bar review of these important issues.

Respectfully submitted,

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IN THE SUPREME COURT OF OHIO

APPEAL FROM THE
COURT OF APPEALS FOR THE
FOURTH APPELLATE DISTRICT
(Highland County)

STATE OF OHIO

APPELLANT :

-v- :

WILLIE EUGENE ADKINS,

APPELLEE. :

MEMORANDUM OF APPELLANT IN SUPPORT OF JURISDICTION OF THE SUPREME COURT OF OHIO

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A third person's extra-judicial statement made in the presence of the defendant is to be treated by the trial court the same way as an extra-judicial statement made by a law enforcement officer in the presence of the defendant.

Authorities Cited in Support of Proposition of Law No. 1:

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PROPOSITION OF LAW NO. 2: 17

An appellate court need not review the propriety of a trial court order granting or denying a motion in limine unless the claimed error is preserved by a timely objection when the issue is actually reached during the trial.

Authorities Cited in Support of Proposition of Law No. 2:

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PROPOSITION OF LAW NO. 3: 22

Where the appellate court finds ample independent evidence to establish that the defendant is guilty as either the principal offender or an aider and abettor and that the wrongfully admitted evidence only involves who the principal offender is, then under the Chapman standard there is harmless error.

Authorities Cited in Support of Proposition of Law No. 3:

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